

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc. Pursuant to)	
Section 10 of the Communications Act of 1934, as)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3))	
and 252(d)(1) in the Anchorage LEC Study Area)	
_____)	

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)¹ submits its reply comments in the above-referenced docket.

DISCUSSION

I. The Data Submitted To The Record Demonstrates The Competitive Nature Of The Anchorage Market.

ACS spends a considerable portion of its Petition for Forbearance demonstrating the substantial and mature competition that exists in Anchorage.² ACS identifies its competitors and their services, details the dramatic increase in market share of its largest competitor (approximately 49% of the market), and highlights the rapid decrease of its own lines (approximately an 8% line loss rate per year over the last five years). It supports these statements with its own experts' statements and with public information and statements filed by

¹ USTelecom is the nation's leading trade association representing communications service providers and suppliers for the telecom industry. USTelecom's carrier members provide a full array of voice, data, and video services across a wide range of communications platforms. ACS and several other Alaska carriers are USTelecom members.

² See ACS Petition at 4-17.

its largest competitor, GCI. This data is compelling. Moreover, several commenters with first-hand knowledge of the competitive market in Alaska verify ACS's statements.³

It is vibrant competition of the sort described in the ACS Petition that underscores the need for the Commission to act quickly, granting forbearance, to ensure that the Anchorage market remains competitive. In this instance, justice delayed is truly justice denied. Without prompt action by the Commission to grant the requested forbearance, ACS's ability to compete will be thwarted and consumers will be denied the benefit of additional investment in local facilities by both ACS and its competitors that forbearance can be expected to stimulate.

II. The Commission Should Develop A Process For Promptly Handling Forbearance Requests Such As This One, Particularly Given The Likelihood That The Commission Will Receive Many More Similar Forbearance Requests.

The ACS Petition is the second one of its kind that the Commission has received in less than two years. ACS filed its forbearance petition in September 2005 and Qwest filed a similar forbearance petition in June 2004. These petitions are a direct reflection of the competitive market for telecommunications services and achievement of one of the dual goals of the Telecommunications Act of 1996 (1996 Act). Now it is time for the Commission to implement the 1996 Act's corresponding goal of deregulation.

With the changed landscape for communications services – specifically the facilities-based competition that incumbent local exchange carriers (ILECs) face from cable service providers, wireless service providers, regional competitive local exchange carriers (CLECs) and the rapidly increasing competition from Internet-based communications services such as Vonage, Google, Microsoft, Yahoo, and Skype – it is more likely than not that the number of forbearance

³ See generally, Alaska Telephone Association Comments, Ketchikan Public Utilities Comments, and Matanuska Telephone Association Comments.

petitions such as those filed by ACS and Qwest will begin to multiply. The Commission must be poised to address these requests. USTelecom urges the Commission to develop now a process for handling requests for forbearance from regulations that are no longer necessary as a result of competition. Not only would the Commission be well prepared to resolve these future requests, but it would also be equipped to process them in a shorter timeframe than the extended 15-month time period permitted or even the statutory 12 months allotted.

Developing a process for handling these forbearance requests does not require any new forbearance test to be developed. The legal standard for forbearance is clear. The Commission has already applied it in granting forbearance to Qwest⁴ and others. The Commission need not re-invent or re-interpret the legal standard, however, a process for addressing forbearance requests such as the ACS forbearance request is necessary and appropriate.

III. A Forbearance Determination Does Not Require The Commission To Revisit The TRRO And The Unbundling Obligations Addressed Therein.

Forbearance from regulation is governed by the requirements of section 10 of the Communications Act of 1934, as amended (Act). Section 10 forbearance is based on whether enforcement of a regulation is not needed to ensure that “charges, practices, classifications, or regulations . . . are just and reasonable” or for the protection of consumers and whether forbearance is consistent with the public interest.

The provisions of the 1996 Act that govern unbundling obligations – sections 251(c)(3) and (d)(2) – do not themselves set the terms for when forbearance may be granted. Rather,

⁴ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005).

sections 251(c)(3) and (d)(2) establish what network elements must be unbundled and when they must be unbundled based on an impairment analysis.

Again, an impairment analysis is employed for implementing section 251(c)(3), not for determining when forbearance should be granted from unbundling obligations that are already determined to exist under section 251(c)(3). Similarly, the section 10(d) limitation that forbearance from section 251(c) obligations cannot be granted until those provisions are fully implemented cannot mean that no impairment exists that might warrant unbundling obligations; to interpret section 10(d) as such would essentially render a request for forbearance meaningless. Accordingly, it is unnecessary and, more importantly, it would be inappropriate for the Commission to revisit its determination in the Triennial Review Remand Order⁵ regarding national unbundling obligations to which ILECs are subject in the context of this request for forbearance from those obligations in a specific geographic market.

IV. Non-RBOC-ILECs Should Not Be Denied Forbearance From Unbundling Obligations Because They Are Not Subject To Section 271 Requirements.

The claims of commenters that ACS's forbearance request should be denied because there is no section 271 backstop on rates that can be charged should be swiftly and succinctly addressed by the Commission. The Commission must dispel any notion that non-RBOC ILECs are not entitled to forbearance from unbundling obligations because they are not subject to section 271 requirements. If the Commission gives any credence to this argument it is very clear that the Commission not only would be applying impermissibly a statutory provision to a group of carriers that simply are not bound by that statute, but it would also be precluding those carriers

⁵ *Unbundled Access to Network Elements; Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005) (Triennial Review Remand Order or TRRO).

from ever being granted forbearance. There is no authority to support this argument and there is no reasonable interpretation of section 10(d) or section 271 that can justify application of section 271 requirements to non-RBOC ILECs or elimination of any section 10 forbearance from unbundling obligations for non-RBOC ILECs.

V. When Forbearance Is Granted In A Competitive Market, Carriers Must Be Free To Adjust Rates According To Market Conditions.

One of the key findings for granting section 10 forbearance is that regulation is not necessary to ensure that charges for telecommunications service are just and reasonable. When a market is competitive, the market itself will ensure that charges are just and reasonable. If a service provider charges unjust or unreasonable rates, its customer has the option to switch to another provider that offers a better rate with the effect being that the carrier charging unjust or unreasonable rates will either be forced to reduce rates or lose customers. Consumers do exercise these marketplace options. Therefore, the Commission must not be persuaded by commenters that argue forbearance from section 251(c)(3) obligations may not be granted if it would result in rates above the previously regulated amounts. When a market is found to be competitive, as is the Anchorage market, just and reasonable rates are what the market will bear, not rates set by regulation.

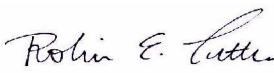
CONCLUSION

USTelecom urges the Commission not to be swayed by commenters without operations in Alaska or concern for the Anchorage market, which file merely for the purpose of fabricating barriers that they will employ to oppose a forbearance request of an ILEC in their own operating areas if and when the ILEC seeks relief from regulation. Such advocacy should not guide the Commission in this matter. Rather, the Commission is obligated to analyze the facts of each

forbearance request in light of the forbearance standard established by Congress. In doing so, the Commission should grant ACS's Petition for Forbearance and do so in an expeditious manner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on February 23, 2006, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and electronically mailed to the following:

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